

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
	:	
v.	:	Criminal No. 3:04CR315(CFD)
	:	
TYRONE ROBINSON	:	

RULING ON DEFENDANT’S MOTIONS TO SUPPRESS

Tyrone Robinson has been charged by a grand jury in a single count indictment with possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). The indictment alleges that Robinson has prior felony convictions on Connecticut state charges¹ and knowingly possessed a Hi-Point, Model “C”, 9 millimeter, semi-automatic pistol, which had moved in interstate commerce from Ohio to Connecticut.

Robinson has submitted two motions to suppress evidence. The first argues that the police unlawfully seized evidence in violation of his Fourth Amendment rights under the U.S. Constitution. The second argues that the oral statements Robinson made to the police after he was arrested should be suppressed because they were obtained in violation of his Fifth and Fourteenth Amendment due process rights.

¹The indictment states that Robinson had the following prior felony convictions: On May 26, 1999, conviction for Criminal Attempt to Commit Assault in the First Degree, in violation of Conn. Gen. Stat., §§ 53a-59(a)(5) and 53a-49(a)(2); on November 1, 1995, conviction for Possession with Intent to Sell Narcotics, in violation of Conn. Gen. Stat. § 21a-277(a), and conviction for Carrying a Pistol without a Permit, in violation of Conn. Gen. Stat. § 29-35(a); on August 24, 1993, conviction for Possession of Marijuana with Intent to Sell, in violation of Conn. Gen. Stat. § 21a-277(b); and on June 19, 1990, conviction of Sale of Narcotics, in violation of Conn. Gen. Stat. § 21a-277(a).

The Court held an evidentiary hearing on the motions on September 6, 2005. The following are the Court's findings of fact and conclusions of law.

I. Findings of Fact

On September 20, 2004, the Hartford Police Department ("HPD") received a 911 call from Corey Robinson (who has no relation to the defendant, and will be referred to in this opinion as "Corey"), who reported that he was threatened by a man with a firearm in the area of Edgewood and Mansfield Streets in Hartford, Connecticut. HPD Officer Carlo Faienza was dispatched to the area to respond to the call. When Officer Faienza reached the area, he was flagged down by Corey near some bushes. Corey was visibly frightened and out of breath. Corey told Officer Faienza that he was approached by two black males, one of whom he knew and whose name was Tyrone Robinson, as he was walking to his vehicle after leaving his aunt's home on Mansfield Street.² Corey stated that Robinson asked him whether he knew a girl named Tina. Corey said that he did not and continued walking to his vehicle. Robinson then asked him if his name was Corey, to which Corey responded that it was. Robinson then removed a firearm from under his sweatshirt and pointed it at him. Corey told Officer Faienza that he then started running through the rear yards of buildings on Mansfield Street, and called 911 on his cell phone. Corey described Robinson to Officer Faienza as a black male in his thirties, who lived on Cleveland Avenue in Hartford. Officer Faienza then put out a general police radio broadcast about the events, and other police units began to canvass the area. He and Corey got into Faienza's squad car and began to search the area for Robinson. After about an hour, without

² Tyrone Robinson will be referred to as "Robinson."

success, Officer Faienza returned Corey to his own vehicle.

Approximately an hour later, Corey flagged down Hartford Police Officers Chris Heimerdinger and Robert Ford in their squad car near a McDonald's Restaurant, on Albany Avenue in Hartford. Corey told the officers that he saw Robinson enter T-Boes Café on Albany Avenue. The officers called for assistance, and Officer Faienza and others responded. Faienza also called the police dispatcher and asked that a criminal history check be run on Robinson's name and address. Faienza was then informed that Robinson had an outstanding warrant for his arrest on several charges.

Officers Faienza, Ford, and Heimerdinger then looked into the window of T-Boes and saw a person who matched the description of Tyrone Robinson that Corey had provided earlier. The officers entered the bar, and Officer Faienza approached Robinson who was standing at the rear of the bar. Faienza asked the defendant if his name was Tyrone Robinson. The defendant then asked "why." Faienza asked again, Robinson became very "defensive," and he finally responded that his name was Tyrone. Because the officers knew of the earlier presence of a firearm and the outstanding arrest warrant, Faienza grabbed Robinson's right arm and attempted to handcuff his wrist. Robinson then tried to pull away and attempt to run to the back door. Officers Faienza and Heimerdinger grabbed Robinson, and Robinson continued to struggle and fight with the officers, pushing them off a couple of times. Officer Ford observed a black handgun in Robinson's right front waistband. Robinson reached for the gun, and because he did so, Ford yelled "gun" and struck Robinson with his nightstick three times on his hands and head. He was then brought under control, and Officers Faienza and Heimerdinger handcuffed Robinson and walked with him outside of T-Boes, where he was arrested and searched. In addition to

recovering the loaded gun, which had fallen on the floor during the struggle, the officers found a small bag of marijuana on Robinson. At this point, Robinson did not appear to be intoxicated to the officers.

Robinson was then taken to the HPD North Substation by Officers Ford and Heimerdinger, where he was interviewed by Special Agent James Hartman of the Bureau of Alcohol, Tobacco, Firearms and Explosives and HPD Detective Dennis Sykowski. Prior to the interview, Robinson was read his Miranda rights aloud by Sykowski and asked if he understood them. He answered affirmatively, and signed a waiver of those rights. Special Agent Hartman smelled alcohol on Robinson, but Robinson was not intoxicated and understood what was happening. Robinson did not appear dizzy, did not complain about his injuries, and his speech was clear. Hartman also testified that he noticed a cut and bump on Robinson's forehead, but that the cut was not bleeding. Robinson did not complain about his head injury during the interview. During the interview, Robinson stated that the firearm that was found on him belonged to him, and was purchased a year earlier for \$100 from "George," and gave a description of him.³ Robinson also stated that Corey had initially threatened him and that he had gone to retrieve his gun from an abandoned car where he stored it. Robinson then declined to provide a written statement and indicated that he no longer wished to be interviewed.

Following the interview, Officer Ford brought Robinson to St. Francis Hospital where he was treated for a hematoma and abrasions on his forehead. Officer Ford testified that while they

³Although Hartman had considerable experience as an emergency medical technician, the Court treats his testimony as that of a lay witness rather than expert testimony. Fed. R. Evid. 701; Singleton v. Secretary of Health, Education & Welfare, 623 F.2d 217, 219 (2d Cir. 1980) ("The testimony of lay witnesses has always been admissible with regard to drunkenness.").

were at the hospital, Robinson spoke jokingly about his arrest. During the trip to the hospital, Robinson did not appear intoxicated, was not disoriented, and had no trouble walking. Although the hospital report also indicates that alcohol was detected on Robinson's breath, it states, "[t]he patient is awake, alert, and cooperative. . . . The patient is oriented . . . and speaking coherently." Following the treatment, Robinson was released back to the custody of the HPD.

II. Conclusions of Law

As a general rule, a criminal defendant who seeks to suppress evidence bears the burden of proof. See United States v. Galante, 547 F.2d 733, 738 (2d Cir. 1976), cert. denied, 431 U.S. 969 (1977). A defendant seeking to suppress evidence based on a search or seizure must first establish standing by a preponderance of the evidence. See United States v. Osorio, 949 F.2d 38, 40 (2d Cir. 1991). Robinson has standing in this case because it is undisputed that evidence was seized from him at T-Boes.

Having satisfied the standing requirement, the defendant next must establish a basis for his motion to suppress. In this case, Robinson seeks to suppress the evidence seized from him preceding his arrest at T-Boes Bar. He also seeks to suppress the oral statements given to Detective Sykowski and Agent Hartman that he possessed and owned the gun.

A. Seizure of the Weapon

In this case, there are two alternative grounds for stopping Tyrone Robinson that must be considered. First, whether there was a permitted Terry stop, and second, whether the outstanding warrant for Robinson's arrest was sufficient to stop him or arrest him.

1. Investigatory Stop Pursuant to Terry v. Ohio

The Fourth Amendment requires that law enforcement officers “must be able to articulate something more than an inchoate and unparticularized suspicion or hunch” for making a brief investigatory, Terry stop. United States v. Sokolow, 490 U.S. 1, 7 (1989) citing Terry v. Ohio, 392 U.S. 1 (1968). Courts consider the totality of the circumstances when evaluating the validity of a stop. Id. at 8. “Although an officer’s reliance on a mere hunch is insufficient to justify a stop . . . the likelihood of criminal activity need not rise to the level required of probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.” United States v. Arvizu, 534 U.S. 266, 274 (2002). The government bears the burden of establishing by a preponderance of the evidence that the police officers had reasonable suspicion to stop the defendant. United States v. Bayless, 921 F. Supp. 211, 213 (S.D.N.Y. 1996), aff’d, 201 F.3d 116 (2d Cir. 2000), cert. denied 529 U.S. 1061 (2000). Also, because the tip concerned the possession and brandishing of a gun, “reasonable suspicion should include consideration of the possibility of the possession of a gun and the government’s need for a prompt investigation.” United States v. Bold, 19 F.3d 99, 104 (2d Cir. 1994). Here, Officers Faienza, Heimerdinger, and Ford were aware of an outstanding warrant for Robinson’s arrest, they were aware of a likelihood that Robinson possessed a dangerous weapon based on Corey Robinson’s information, and they were given his name, physical description and told where he was.⁴ Robinson’s conduct

⁴The defendant argues that the tip provided by Corey Robinson to the officers was insufficient because he was an unknown informant and because his tip was not corroborated. There is no requirement that officers rely only on tips provided by known informants. See Illinois v. Gates, 462 U.S. 213, 237-238 (1983) (an anonymous tip may provide the basis for a search warrant). The primary issue with an officer’s reliance on a tip is its reliability. However, “[a] face-to-face informant must, as a general matter, be thought more reliable than an anonymous . . . tipster, for the former runs the greater risk that he may be held accountable if his

when first approached by the officer at T-Boes was relevant. The method of searching Robinson for the handgun was appropriate, even the use of handcuffs, given the dangerous circumstances present. Terry, 392 U.S. at 23. The Court therefore concludes that the officers had a sufficient reasonable suspicion to stop, question, and frisk Robinson at T-Boes as a valid Terry stop, and the discovery of the gun during the subsequent altercation is admissible.

2. Search Incident to Arrest for Outstanding Warrant

An alternative basis for denying the motion to suppress the handgun is that a person may be arrested by law enforcement officers in order to execute an outstanding warrant for that person's arrest. Fed. R. Crim. P. 4. Because there was an outstanding warrant for Robinson's arrest, the Court concludes that the HPD acted lawfully by initiating his arrest. A person who is lawfully arrested may also be searched incident to the arrest. United States v. Robinson, 414 U.S. 218, 236 (1973) ("It is the fact of the lawful arrest which establishes the authority to search."). Likewise, "[w]here the formal arrest followed quickly on the heels of the challenged search of [defendant's] person, we do not believe it particularly important that the search preceded the arrest rather than vice versa." Rawlings v. Kentucky, 448 U.S. 98, 111 (1980); see also United States v. Donaldson, 793 F.2d 498, 503 (2d Cir. 1986). The Court finds that even though the weapon was seized prior to Robinson's arrest, it was obtained in a legal search incident to arrest. It is therefore admissible on that basis as well.

information proves false." United States v. Salazar, 945 F.2d 47, 50-51 (2d Cir. 1991). The tip provided by Corey was therefore sufficient for officers to rely on for a Terry stop, especially in light of Robinson's conduct when first questioned at T-Boes.

B. Suppression of Statements

Incriminating statements made by a person in custody are only admissible if they were made after that person voluntarily waived his or her Miranda rights. Colorado v. Connelley, 479 U.S. 157, 169 (1986). Indeed, “Miranda protects defendants against government coercion leading them to surrender rights protected by the Fifth Amendment.” Id. at 170. The Government bears the burden of proving by a preponderance of the evidence that the waiver was knowing and voluntary. United States v. Scarpa, 897 F.2d 63, 68 (2d Cir. 1990); North Carolina v. Butler, 441 U.S. 369, 373 (U.S. 1979) (“The courts must presume that a defendant did not waive his rights.”) The waiver of Miranda rights requires that:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421 (U.S. 1986). Courts common consider such factors as "the type and length of the questioning, the defendant's physical and mental capabilities, and the government's method of interrogation," United States v. Mast, 735 F.2d 745, 749 (1984) citing United States v Venator, 568 F. Supp. 832, 835 (N.D.N.Y. 1983), as well as "the accused's age, his lack of education or low intelligence, the failure to give Miranda warnings, the length of detention, the nature of the interrogation, and any use of physical punishment." Campaneria v. Reid, 891 F.2d 1014, 1020 (2d Cir. 1989).

The defendant argues that his waiver was invalid because he was intoxicated. Courts

that have considered a defendant’s claimed intoxication as interfering with a Miranda waiver have found that, “[e]ven evidence of a defendant's intoxication with alcohol or a controlled substance does not preclude a finding of a knowing and intelligent waiver provided that they [sic] appreciate the nature of the waiver.” Alvarez v. Keane, 92 F. Supp. 2d 137, 150 (S.D.N.Y. 2000).

In this case, Robinson was not intoxicated or impaired to a degree that would have interfered with his ability to knowingly, voluntarily, and intelligently execute the Miranda waiver. Rather, the Court credits the testimony by the law enforcement officers who interacted with him on the day of the arrest, and also the St. Francis hospital report, which indicates that Robinson was not intoxicated or impaired. Robinson's head injury, his use of alcohol and (possible use of) marijuana earlier that day did not make him unable to fully understand the rights encompassed by the Miranda waiver and waive those rights. While Robinson did not provide a written statement, he did sign an effective waiver of his Miranda rights after the rights were read aloud to him by Detective Sykowski. The oral statements are thus admissible.

III. Conclusion

The defendant's motions to suppress [doc. # 17] and [doc. #18] are **DENIED**.

SO ORDERED this 6th day of April, 2006, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE